

Service Date: August 29, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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|                                    |   |                   |
|------------------------------------|---|-------------------|
| SILVERBOW OWNERS ASSOCIATION, a    | ) |                   |
| Non-profit Condominium Association | ) |                   |
| of the State of Montana,           | ) | UTILITY DIVISION  |
|                                    | ) |                   |
| Complainant,                       | ) |                   |
|                                    | ) | DOCKET NO. 89.3.5 |
| vs.                                | ) |                   |
|                                    | ) |                   |
| LONE MOUNTAIN SPRINGS, INC.,       | ) | ORDER NO. 5493    |
|                                    | ) |                   |
| Defendant.                         | ) |                   |

ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR FAILURE  
TO STATE A CAUSE OF ACTION

Defendant's motion to dismiss is properly before this Commission by virtue of Rule 38.2.1501 of the Administrative Rules of Montana (ARM), which allows for the filing of motions which "contain any matter relevant to the clarification of the proceeding before the Commission."

The Commission is guided in its review of this motion by Montana case law interpreting Rule 12(b) of the Montana Rules of Civil Procedure. In Morgan v. City of Harlem, 227 Mont. 435 (1987), it was held that a motion to dismiss for failure to state a cause of action, filed under Rule 12(b), should not be granted unless it appears certain that the plaintiff is not entitled to any relief under any set of facts which could be proved in support of

the complaint. Further, the complaint should be construed in a light most favorable to the plaintiff. Id.

In applying these standards to the instant matter, it should be observed that Title 69, Chapter 3, of the Montana Code Annotated empowers the Public Service Commission with the authority to regulate privately owned and operated water utilities which provide service to the public. See Section 69-3-101(e), MCA. However, the Commission's authority in this regard, while broad, is primarily intended to insure reasonably adequate service and facilities at a just and reasonable cost. See Section 69-3-201, MCA. See also Section 69-3-321, MCA (specifying the types of complaints over which the Public Service Commission has jurisdiction).

Recognizing that the Commission's authority is primarily a function of its regulatory mission, it should be apparent that complaints are properly before the Commission when they contain causes of action based on a service, facility or rate dispute.

The complaint here, however, fails to specifically frame either a service, facility or rate related cause of action. Essentially, as evidenced by the pleadings of both parties, this complaint constitutes a request for a declaratory ruling on the application of Section 69-4-511, MCA, to condominium developments.

This procedural defect aside, the Commission finds that the complaint does in fact contain an underlying allegation of inadequate service and/or facility.

This finding is based on the Commission's position that discharge of the public utility obligation includes reasonable repair and maintenance of a utility's facilities. Both parties have acknowledged that leaks currently exist and that this complaint is directed at determining financial responsibility for the necessary repairs. The Commission would be remiss then to dismiss this complaint while such service and/or facility problems apparently exist.

In regard to Section 69-4-511, MCA, the parties should anticipate that the issue of financial responsibility will be addressed and determined within the context of the instant complaint.

Therefore, for the all the aforementioned reasons, the Commission hereby finds that the complaint contains a cognizable cause of action based on inadequate service and/or facility, and that Defendant's Motion to Dismiss must be denied.

Done and Dated this 27th day of August, 1990 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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REX MANUEL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.